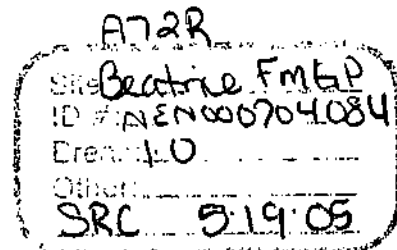




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

May 19, 2005



City of Beatrice
c/o James Bauer
City Administrator
400 Ella Street
Beatrice, NE 68310-0279

Re: Beatrice Gas & Power Company
Former Manufactured Gas Plant Site
Beatrice, Gage County, Nebraska

Dear Mr. Bauer:

I am writing to advise you of a correction to the Notice Letter issued to the city of Beatrice, Nebraska dated May 18, 2005. Paragraph 4 on page 3 of the letter should indicate that a similar letter and draft AOC is being sent to Centel Corporation, 6220 Sprint Parkway, Overland Park, Kansas 66251, not Aquila, Inc. In addition, I have attached a corrected copy of the draft Administrative Order on Consent.

I apologize for any inconvenience this may have caused.

Sincerely,

Barbara L. Peterson
Assistant Regional Counsel

Enclosure

40254095



SUPERFUND RECORDS



DRAFT
MAY 19, 2005

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

IN THE MATTER OF:)	
)	
BEATRICE FORMER MANUFACTURED)	
GAS PLANT SITE)	
BEATRICE, GAGE COUNTY, NEBRASKA)	
)	
CITY OF BEATRICE, NEBRASKA)	
)	
and)	
)	
CENTEL CORPORATION)	
)	
)	CERCLA Docket No. 07-2005-0234
)	
Respondents)	
)	
)	
Proceeding Under Sections 104, 106(a), 107)	
and 122 of the Comprehensive Environmental)	
Response, Compensation and Liability Act)	
of 1980, as amended, 42 U.S.C. §§ 9604,)	
9696(a), 9607 and 9622.)	

ADMINISTRATIVE ORDER ON CONSENT FOR REMOVAL ACTION

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and the city of Beatrice, Nebraska, and Centel Corporation ("Respondents"). This Order provides for the performance of a removal action by Respondents and the reimbursement of certain response costs incurred by the United States at or in connection with the property located at First and Market Streets in Beatrice, Gage County, Nebraska (the "Beatrice Former Manufactured Gas Plant Site" or the "Site").

2. This Order is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA").

3. EPA has notified the State Nebraska of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondents recognize that this Order has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Order do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Order. Respondents agree to comply with and be bound by the terms of this Order and further agree that they will not contest the basis or validity of this Order or its terms.

II. PARTIES BOUND

5. This Order applies to and is binding upon EPA and upon Respondents and their successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Order.

6. Respondents are jointly and severally liable for carrying out all activities required by this Order. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Order, the remaining Respondents shall complete all such requirements.

7. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondents shall be responsible for any noncompliance with this Order.

III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

b. "Day" shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

c. "Effective Date" shall be the effective date of this Order as provided in Section XXX.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

e. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 33 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 43 (emergency response), and Paragraph 68 (work takeover).

f. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

g. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

h. "Order" shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Order and any appendix, this Order shall

control.

i. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

j. "Parties" shall mean EPA and Respondents.

k. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through May 9, 2005, plus interest on all such costs through such date.

l. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

m. "Respondents" shall mean the city of Beatrice, Nebraska and Centel Corporation.

n. "Section" shall mean a portion of this Order identified by a Roman numeral.

o. "Site" shall mean the Beatrice Former Manufactured Gas Plant Superfund Site, located at the southwest corner of First and Market Streets in Beatrice, Gage County, Nebraska, also known as Lots 7, 8, 9, 10, 11 and 12, Block 71, Original Town, now city of Beatrice, Gage County, Nebraska, and depicted generally on the map attached as Appendix A.

p. "Statement of Work" or "SOW" shall mean the statement of work for implementation of an engineering evaluation and cost analysis ("EE/CA"), as set forth in Appendix B to this Order, and any modifications made thereto in accordance with this Order.

q. "Work" shall mean all activities Respondents are required to perform under this Order.

IV. FINDINGS OF FACT

9. The Beatrice Former Manufactured Gas Plant (FMGP) Site is located on the southwest corner of the intersection of First and Market Streets in Beatrice, Gage County, Nebraska. The Site is bordered to the north by a city of Beatrice right-of-way along First Street, the Big Blue River to the west, undeveloped land to the south, and a railroad right-of-way to the east, with light commercial and industrial development beyond in all directions. The Site consists of a cement pad, gasometer foundation and two other concrete foundations. Three groundwater monitoring wells installed in 1992 are located on the Site. The Site is not secure.

10. A manufactured gas plant is believed to have operated at the Site from 1906 until

1932, when a pipeline was installed that provided natural gas to the city of Beatrice. An EPA study of manufactured gas production in the United States found that, historically, wastes produced by the gas manufacturing process (such as oil and tars, sludges, ash, etc.) often contained hazardous materials that included polycyclic aromatic hydrocarbons (PAHs), volatile organic compounds (VOCs), phenols, cyanides, and metals. Although some of the wastes and by-products were often reused, sold, or given away for another use, it was common practice to dispose of remaining waste materials on the property in shallow pits or lagoons, commonly referred to as tar wells. Tanks that were used for storage of product gas also were used frequently for storage of tars and waste condensates. Because the tanks frequently leaked, they were a significant source of contamination.

11. A survey of manufactured gas and by-product production and locations in the United States by the Radian Corporation found that about 730 gallons of waste tar sludge typically were generated for every million cubic feet (ft³) of gas produced at similar FMGP facilities. Of that quantity, about 76 percent generally was dehydrated and sold, leaving the remaining 24 percent to be reused or disposed of. According to the Radian survey, an average of 32 million ft³ of gas was produced annually at the Beatrice FMGP, resulting in the generation of approximately 23,360 gallons of waste tar sludge annually, with approximately 5,606 gallons being reused or disposed of annually at the Site. Over the course of the facility's 30 year history, approximately 168 thousand gallons of waste tar sludge were potentially disposed of at the Site.

12. A title search performed by Capitol Title of Beatrice, Nebraska, indicates that during the period from 1906 until 1932, the Site was owned by Beatrice Gas and Power Company (1906-1907); Gage County Gas Light & Power Company (formerly Beatrice Gas and Power Company) (1907-1922); Nebraska Gas & Electric Company (1922-1927); and, Iowa-Nebraska Light&Power Company (1927-1945). Since 1945, the Site has been owned by Central Electric & Gas Company (1945-1976), Minnesota Gas Company (1976-1993), and Peoples Natural Gas Company, a Division of UtiliCorp United, Inc. (1993-1996). The Site is presently owned by the city of Beatrice, Nebraska.

13. In 1992, Minnesota Gas Company (now known as CenterPoint Energy Minnesota Gas) hired a consultant, HDR Inc., to conduct an investigation of the Site which included collection of soil samples and groundwater samples. Chemical analysis of the samples indicated that a release of site-related contaminants had occurred. PAHs (acenaphthene, fluorene and naphthalene) were detected in the groundwater samples in concentrations that exceeded EPA Preliminary Remediation Goals (PRGs) for tap water. VOCs (benzene, toluene, ethylbenzene and total xylenes) were detected in the groundwater samples at concentrations that exceeded EPA health-based standards. Arsenic and lead were also detected in the groundwater samples at concentrations that exceeded health-based standards.

14. In May 2001, Jacobson Helgoth Consultants Inc. (JHC) conducted an investigation of

the Site for the Nebraska Department of Environmental Quality (NDEQ). Eight soil samples and two groundwater samples were collected. No contaminants were detected in any of the soil samples. However, the results of analysis of one of the groundwater samples collected during the investigation showed the presence of benzo[g,h,i]perylene, naphthalene, benzene, toluene, ethyl benzene, total xylenes, arsenic, barium, chromium and mercury. Extractable hydrocarbons analysis detected high levels of heavy fuel oil. Free product was observed in one of the two monitoring wells installed during the 1992 site investigation.

15. In December 2001, at the request of NDEQ, Tetra Tech EM Inc. performed a combined preliminary assessment and site inspection (PA/SI) at the Site. Samples collected during the PA/SI confirmed that a release of contaminants associated with the former manufactured gas plant had occurred. Four PAHs (benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene and naphthalene) and arsenic were detected in soil samples at concentrations that exceeded EPA industrial soil PRGs. Seven PAHs (benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, fluorene, naphthalene and pyrene) were identified in samples from the on-site monitoring wells at concentrations that exceed EPA PRGs for tap water. Benzene, total xylenes, 1,2,4-trimethylbenzene, and 1,3,5-trimethylbenzene were detected in groundwater samples at concentrations above EPA PRGs for tap water. Metals, including arsenic, lead and selenium, were detected at concentrations that exceeded EPA tap water PRGs or established maximum contaminant levels (MCLs).

16. In September 2004, EPA performed a removal site evaluation at the Site. PAHs (benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, dibenz(a,h)anthracene and indeno(1,2,3-cd)pyrene) and VOCs (benzene and ethylbenzene) were detected in surface and subsurface soil samples at concentrations exceeding EPA PRGs for industrial soil. Soil contamination covers approximately 50 per cent of the Site. The area of contaminated soil roughly covers 54,400 square feet. Surface soil contamination extends to at least 16 feet bgs. PAHs (including acenaphthene, benzo(a)anthracene, chrysene, fluorene, naphthalene, and pyrene) and VOCs (benzene, ethylbenzene, toluene and total xylenes) were also detected in groundwater samples. Groundwater contamination is concentrated in the southern portion of the Site and appears to be migrating to the southwest toward the Big Blue River.

17. The residential population within 4 miles of the Site is 13,570 persons. Drinking water for residences within a 1-mile radius of the Site is supplied by the city of Beatrice and is obtained from 11 municipal wells located about 6 miles northwest of the site, adjacent to the Big Blue River. According to the Nebraska Department of Natural Resources (NDNR) Registered Groundwater Data Retrieval website, no registered wells used for domestic purposes are located within a 1-mile radius of the Site. A review of the NDNR registered well database indicated that the nearest active domestic wells to the Site are about 2 miles south and 2 miles northeast of the Site.

18. The Big Blue River is within 0.1 mile downgradient of the Site. About 2 miles of wetlands frontage occur within the 15-mile target distance limit (TDL) of the Site. Several isolated wetland pockets that average less than 0.25 mile in length make up the 2 miles of frontage. The Nebraska Game and Parks Commission (NGPC) noted that the Big Blue River is a designated fishery used for recreational fishing and consumption. The NGPC also noted no federal endangered or threatened fish species are known to inhabit the 15-mile TDL downgradient of the site. According to the Department of Interior, endangered species, including the bald eagle, Eskimo curlew and peregrine falcon reside within the 15-mile TDL.

19. Human and environmental exposure to the hazardous substances, pollutants and/or contaminants such as those found at the Site may result in the following toxicological effects:

a. PAHs are harmful to human health under certain circumstances. Studies of people show that individuals exposed by breathing or skin contact for long periods to mixtures that contain PAHs and other compounds can develop cancer. As a result, certain PAH compounds, including benzo(a)pyrene (BAP) are classified as probable human carcinogens. BAP has been found at the Site. In addition, studies in animals have shown that PAHs can cause harmful effects on skin, body fluids, and the body's system for fighting disease after both short and long-term exposures. There are more than 100 different PAHs. PAHs generally occur as complex mixtures, not as single compounds. Although the health effects of individual PAHs are not exactly alike, they are typically considered as a group rather than as individual compounds.

b. Toluene is a colorless, flammable liquid. Breathing large amounts of toluene for short periods of time adversely affects the human nervous system, kidneys, liver and heart. Some studies have shown that repeat exposure to large amounts of toluene during pregnancy can adversely affect a developing fetus. Toluene can contribute to the formation of photochemical smog when it reacts with other volatile organic carbon substances in air.

c. Benzene is a known human carcinogen. Breathing very high levels of benzene can result in death. Exposure to low levels of benzene may cause drowsiness, dizziness, rapid heart rate, headaches, tremors, confusion, and unconsciousness. The major effect of benzene from long-term exposure is on the blood. Prolonged exposure to benzene has been associated with development of one kind of leukemia. Benzene causes harmful effects on the bone marrow and can cause a decrease in red blood cells leading to anemia. It can also cause excessive bleeding and can affect the immune system, increasing the chance for infection.

d. Ethyl benzene occurs naturally in coal tar and petroleum. Short-term exposure

to low levels of ethyl benzene in the air for short periods of time has caused eye and throat irritation. Exposure to higher levels has caused more severe effects such as decreased movement and dizziness.

e. Xylene occurs naturally in petroleum and coal tar. Short-term exposure at high levels of xylene or chemical mixtures causes irritation of the skin, eyes, nose, and throat; difficulty in breathing; impaired function of the lungs; delayed response to visual stimulus; impaired memory; stomach discomfort; and possible changes in the liver and kidneys. Death can occur in individuals exposed to very high levels of xylene for short periods. Both short- and long-term exposure to high concentrations of xylene can cause adverse effects to the nervous system such as headaches, lack of muscle coordination dizziness and confusion. Exposure of high levels of xylene to pregnant women may cause harmful effects to the fetus.

f. Lead can affect almost every organ and system in the body. The most sensitive is the central nervous system, particularly in children. Lead also damages kidneys and the reproductive system. The effects are the same whether it is breathed or swallowed. At high levels, lead may decrease reaction time, cause weakness in fingers, wrists, or ankles, and possibly the memory. Lead may cause anemia and can also damage the male reproductive system.

g. Short-term oral exposure to high levels of Selenium may cause nausea, vomiting, and diarrhea. Chronic oral exposure to high concentrations of selenium compounds can produce a disease called selenosis which is characterized by hair loss, nail brittleness, and neurological abnormalities (such as numbness and other odd sensations in the extremities). Brief exposures to high levels of elemental selenium or selenium dioxide in air can result in respiratory tract irritation, bronchitis, difficulty breathing and stomach pains. Longer exposure to either of these air-borne forms can cause respiratory irritation, bronchial spasms and coughing.

h. Arsenic is a naturally occurring element widely distributed in the earth's crust. In the environment, arsenic is combined with oxygen, chlorine, and sulfur to form inorganic arsenic compounds. Inorganic arsenic can increase the risk of lung cancer, skin cancer, bladder cancer, liver cancer, kidney cancer and prostate cancer. Inorganic arsenic is classified as a human carcinogen. Breathing high levels of inorganic arsenic may cause sore throat or irritated lungs. Ingestion of high levels of inorganic arsenic can result in death. Lower levels of arsenic can cause nausea and vomiting, decreased production of red and white blood cells, abnormal heart rhythm, damage to blood vessels, and a sensation of "pins and needles" in hands and feet.

i. Barium is a silvery-white metal found in nature. It occurs combined with other chemicals such as sulfur or carbon and oxygen. These combinations are called compounds. Barium compounds that dissolve in water may cause harmful health effects in people. Ingesting high levels of barium compounds that dissolve in well water over the short term has resulted in difficulties breathing; increased blood pressure; changes in heart rhythm; stomach irritation; brain swelling; muscle weakness and damage to the liver, kidney, heart and spleen.

j. Cadmium is a mineral usually found combined with other elements such as oxygen, chlorine or sulfur. Breathing high levels of cadmium severely damages the lungs and can cause death. Eating food or drinking water with very high levels severely irritates the stomach, leading to vomiting and diarrhea. Long-term exposure to lower levels of cadmium in air, food, or water leads to a buildup of cadmium in the kidneys and possible kidney disease. Other long-term effects are lung damage and fragile bones.

k. The nervous system is very sensitive to all forms of mercury (metallic, inorganic, or organic). Exposure to high levels of mercury can permanently damage the brain, kidneys, and developing fetus. Effects on brain functioning may result in irritability, shyness, tremors, changes in vision or hearing and memory problems.

20. Respondent Centel Corporation is successor to Central Electric & Gas Company which owned and operated the Site from 1945 until 1976. Central Electric & Gas Company changed its name to Western Power & Gas Company in 1961 upon merger with Southern Colorado Power. Western Power & Gas Company merged with and into Western Light & Telephone, with the surviving corporation named Western Power & Gas Company. Western Power & Gas Company changed its name to Central Telephone & Utilities Corporation. In 1982, Central Telephone & Utilities Corporation changed its name to Centel Corporation. In March 1993, Centel Corporation merged into Sprint Cellular Company, a wholly-owned subsidiary of Sprint Corporation.

21. Respondent city of Beatrice, Nebraska ("City") is the current owner of the Site. A significant portion (75%) of the costs of acquisition and demolition of structures on the property at the time of purchase was secured from the Federal Emergency Management Agency's (FEMA) Hazard Mitigation Grant Program. The conditions of the FEMA purchase preclude any commercial activity on the property.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

22. Based on the Findings of Fact set forth above, and the Administrative Record

supporting this removal action, EPA has determined that:

a. The Beatrice Former Manufactured Gas Plant Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site.

e. The conditions described in Paragraphs 13-16 of the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The removal action required by this Order is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Order, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Order, including, but not limited to, all attachments to this Order and all documents incorporated by reference into this Order.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

23. Respondents shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within 30 days of the Effective Date. Respondents shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 10 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor, Respondents shall retain a different contractor and shall notify EPA of that

contractor's name and qualifications within 10 days of EPA's disapproval.

24. Within 30 days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Order and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 10 days following EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by all Respondents.

25. EPA has designated Kevin Larson of the Enforcement/Fund-Lead Removal Branch, Region 7, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Order, Respondents shall direct all submissions required by this Order to the OSC at 901 North 5th Street, Kansas City, Kansas 66101.

26. EPA and Respondents shall have the right, subject to Paragraph 24, to change their respective designated OSC or Project Coordinator. Respondents shall notify EPA 10 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

27. Respondents shall perform, at a minimum, all actions necessary to implement the Statement of Work. The actions to be implemented generally include, but are not limited to, the following:

a. Additional site characterization activity which, in conjunction with the site characterization work already undertaken at this Site, is sufficient to determine the Site's physiography, geology and hydrology; define surface and subsurface pathways of migration; identify the sources of contamination within the Site and define the nature, extent and volume of the sources of contamination at the Site; determine the extent of migration of contamination as well as its volume and any changes in its physical or chemical characteristics; and determine contamination fate and transport;

b. Preparation of a Baseline Risk Assessment to identify and characterize the actual and potential risks to human health and the environment due to contamination at the Site. The Baseline Risk Assessment shall be prepared in accordance with the EPA's Risk Assessment Guidance for Superfund consisting of the following two volumes: the Human Health Evaluation

Manual, dated October 1989 (OSWER Directive number 9285.7-01a) and the Environmental Evaluation Manual, dated March 1989 (OSWER Directive number 9285.7-02);

- c. An identification of the scope, goals and objectives for the removal action;
- d. An identification and comparative analysis of removal action alternatives appropriate for addressing the removal action objectives, analyzing their short- and long-term effectiveness, implementability and cost, as set forth in OSWER Directive No. 9360.0-32 and the SOW; and
- e. Preparation and submittal of an EE/CA Report which shall contain the elements listed in Exhibit 5 on page 23 of the Guidance on Conducting Non-Time Critical Removal Actions Under CERCLA (EPA 540-R-93-0S7), where applicable.

28. Work Plan and Implementation.

- a. Within 30 days after the Effective Date, Respondents shall submit to EPA for approval a draft Work Plan for performing the removal action generally described in Paragraph 27 above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Order.
- b. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If EPA requires revisions, Respondents shall submit a revised draft Work Plan within 30 days of receipt of EPA's notification of the required revisions. Respondents shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Order.
- c. Respondents shall not commence any Work except in conformance with the terms of this Order. Respondents shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 28(b).

29. Health and Safety Plan. Within 30 days after the Effective Date, Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Order. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the

pendency of the removal action.

30. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondents shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondents shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

b. Upon request by EPA, Respondents shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondents shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondents shall notify EPA not less than 5 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondents to take split or duplicate samples of any samples it takes as part of its oversight of Respondents' implementation of the Work.

31. Reporting.

a. Within 60 days after Respondent has received EPA's written approval of the Work Plan, Respondents shall submit for EPA review and approval a Site Characterization Report.

b. Within 30 days after receipt of EPA's written approval of the Site Characterization Report, Respondents shall submit to EPA for review and approval a Baseline Risk Assessment Report.

c. Within 30 days after receipt of EPA's written approval of the Baseline Risk Assessment, Respondents shall submit for EPA review and approval an Engineering

Evaluation/Cost Assessment ("EE/CA").

d. Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order on the 15th day of each month after the date of receipt of EPA's approval of the Work Plan until termination of this Order, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

e. Respondents shall submit 2 copies of all plans, reports or other submissions required by this Order, the Statement of Work, or any approved work plan. Upon request by EPA, Respondents shall submit such documents in electronic form.

f. Respondent city of Beatrice shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Order and written notice to EPA of the proposed conveyance, including the name and address of the transferee.

IX. SITE ACCESS

32. The City shall, commencing on the Effective Date, provide EPA, and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Order.

33. Where any action under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 45 days after the Effective Date, or as otherwise specified in writing by the OSC. Respondents shall immediately notify EPA if, after using their best efforts, they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondents shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

34. Notwithstanding any provision of this Order, EPA retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes

or regulations.

X. ACCESS TO INFORMATION

35. Respondents shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

36. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents.

37. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents assert such a privilege in lieu of providing documents, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

38. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XI. RECORD RETENTION

39. Until 10 years after Respondents' receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after Respondents' receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

40. At the conclusion of this document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Respondents shall deliver any such records or documents to EPA. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

41. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

42. Respondents shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or

state environmental or facility siting laws. Respondents shall identify ARARs in the Work Plan subject to EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

43. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer, Emergency Response and Removal Branch, EPA Region 7, at (913) 281-0991, of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

44. In addition, in the event of any release of a hazardous substance from the Site, Respondents shall immediately notify the OSC at (913) 281-0991 and the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

45. The OSC shall be responsible for overseeing Respondents' implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Order, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XV. PAYMENT OF RESPONSE COSTS

46. Payment for Past Response Costs.

a. Within 30 days after the Effective Date, Respondents shall pay to EPA \$154,697.45 for Past Response Costs. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in

accordance with current EFT procedures to be provided to Respondents by EPA Region 7, and shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, the EPA Region and Site/Spill ID Number A72R, and the EPA docket number for this action.

b. At the time of payment, Respondents shall send notice that such payment has been made to Barbara Peterson, Senior Assistant Regional Counsel, U.S. EPA, Region 7, 901 N. 5th Street, Kansas City, Kansas 66101.

c. The total amount to be paid by Respondents pursuant to Paragraph 46(a) shall be deposited in the Beatrice Former Manufactured Gas Plant Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

47. Payments for Future Response Costs.

a. Respondents shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondents a bill requiring payment that includes an itemized cost summary. Respondents shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 49 of this Order.

b. Respondents shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party(ies) making payment, EPA Site/Spill ID number A72R and the EPA Docket Number 07-2005-0234. Respondents shall send the check(s) to:

U.S. EPA Region 7
P.O. Box 371099M
Pittsburgh, PA 15251

c. At the time of payment, Respondents shall send notice that payment has been made to Barbara Peterson, Assistant Regional Counsel, United States Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101.

d. The total amount to be paid by Respondents pursuant to Paragraph 46(a) shall be deposited in the Beatrice Former Manufactured Gas Plant Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

48. In the event that the payment for Future Response Costs are not made within 30 days of Respondents' receipt of a bill, Respondents shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

49. Respondents may dispute all or part of a bill for Future Response Costs submitted under this Order, if Respondents allege that EPA has made an accounting error, or if Respondents allege that a cost item is inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondents shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 47 on or before the due date. Within the same time period, Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit a copy of both checks to the person listed in Paragraph 47(c) above. Respondents shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 10 days after the dispute is resolved.

XVI. DISPUTE RESOLUTION

50. Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Order. The Parties shall attempt to resolve any disagreements concerning this Order expeditiously and informally.

51. If Respondents object to any EPA action taken pursuant to this Order, including billings for Future Response Costs, they shall notify EPA in writing of their objection(s) within 15 days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have 30 days from EPA's receipt of Respondents' written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

52. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Order. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Superfund Division Director level or higher will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Order. Respondents' obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the

dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

53. Respondents agree to perform all requirements of this Order within the time limits established under this Order, unless the performance is delayed by a *force majeure*. For purposes of this Order, a *force majeure* is defined as any event arising from causes beyond the control of Respondents, or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Order despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

54. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a *force majeure* event, Respondents shall notify EPA orally within 48 hours of when Respondents first knew that the event might cause a delay. Within 5 days thereafter, Respondents shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

55. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Order that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

56. Respondents shall be liable to EPA for stipulated penalties in the amounts set

forth in Paragraphs 62 and 63 for failure to comply with the requirements of this Order specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by Respondents shall include completion of the activities under this Order or any work plan or other plan approved under this Order identified below in accordance with all applicable requirements of law, this Order, the SOW, and any plans or other documents approved by EPA pursuant to this Order and within the specified time schedules established by and approved under this Order.

57. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 57(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1500	1st through 14th day
\$2500	15th through 30th day
\$5000	31st day and beyond

b. Compliance Milestones

- i. Submittal of EE/CA Work Plan within 30 days of the Effective Date of this Order.
- ii. Submittal of Site Characterization Report within 60 days of EPA approval of the EE/CA Work Plan.
- iii. Submittal of a risk evaluation within 30 days of EPA approval of the Site Characterization Report.
- iv. Submittal of a comparative analysis of removal alternatives within 30 days of EPA approval of the risk evaluation.

58. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Paragraph 31 (d):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1000	1st through 14th day
\$ 1500	15th through 30th day
\$ 2500	31st day and beyond

59. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 69 of Section XX, Respondents shall be liable for a stipulated penalty in the amount of \$250,000.

60. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and 2) with respect to a decision by the EPA Management Official at the Superfund Division Director level or higher, under Paragraph 52 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

61. Following EPA's determination that Respondents have failed to comply with a requirement of this Order, EPA may give Respondents written notification of the failure and describe the noncompliance. EPA may send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation.

62. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. EPA Region 7, P.O. Box 371099, Pittsburgh, PA 15251, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number A72R, the EPA Docket Number 07-2005-0234, and the name and address of the party(ies) making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 47(c).

63. The payment of penalties shall not alter in any way Respondents' obligation to complete performance of the Work required under this Order.

64. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

65. If Respondents fail to pay stipulated penalties when due, EPA may institute

proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 53. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Order or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX, Paragraph 69. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XIX. COVENANT NOT TO SUE BY EPA

66. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Order, and except as otherwise specifically provided in this Order, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work and for recovery of Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondents of all obligations under this Order, including, but not limited to, payment of Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondents and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

67. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

68. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Order is without prejudice to, all rights against Respondents with respect to all other matters, including, but not

limited to:

- Order;
- Costs;
- a. claims based on a failure by Respondents to meet a requirement of this
 - b. liability for costs not included within the definition of Future Response
 - c. liability for performance of response action other than the Work;
 - d. criminal liability;
 - e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
 - f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
 - g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

69. Work Takeover. In the event EPA determines that Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondents may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondents shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this Order, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENTS

70. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, or this Order, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of

CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provisions of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Nebraska Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

71. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 68 (b), (c), and (e) - (g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

72. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXII. OTHER CLAIMS

73. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

74. Except as expressly provided in Section XXI (Covenant Not to Sue By Respondents) and Section XIX (Covenant Not to Sue by EPA), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

75. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION PROTECTION

76. The Parties agree that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of

CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Order. The "matters addressed" in this Order are the Work and Future Response Costs. Except as provided in Section XXI, nothing in this Order precludes the United States or Respondents from asserting any claims, causes of action, or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

XXIV. INDEMNIFICATION

77. Respondents shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Order. In addition, Respondents agree to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Order. Neither Respondents nor any such contractor shall be considered an agent of the United States.

78. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

79. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXV. INSURANCE

80. At least 7 days prior to commencing any on-Site work under this Order, Respondents shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of 2 million dollars, combined

single limit. Within the same time period, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Order, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Order. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

81. Within 30 days of the Effective Date, Respondents shall establish and maintain financial security in the amount of \$ 500,000 in one or more of the following forms:

- a. A surety bond guaranteeing performance of the Work;
- b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c. A trust fund;
- d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of Respondents; or
- e. A demonstration that one or more of the Respondents satisfy the requirements of 40 C.F.R. Part 264.143(f).

82. If Respondents seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 81(a) of this Section, Respondents shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Respondents seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 81 (d) or (e) of this Section, they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Respondents shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 81 of this Section. Respondents' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Order.

83. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 81 of this Section, Respondents may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondents shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Respondents may reduce the amount of the security in accordance with the written decision resolving the dispute.

84. Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondents may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVII. MODIFICATIONS

85. The OSC may make modifications to any plan or schedule or Statement of Work in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

86. If Respondents seek permission to deviate from any approved work plan or schedule or Statement of Work, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 85.

87. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

XXVIII. NOTICE OF COMPLETION OF WORK

88. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including payment of Future Response Costs and stipulated penalties and record retention, EPA will provide written notice to Respondents. If EPA determines that any such Work has not been completed in accordance with this Order, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the

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Work Plan if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Order.

XXIX. SEVERABILITY/INTEGRATION/APPENDICES

89. If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

90. This Order and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Order. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Order.

XXX. EFFECTIVE DATE

91. This Order shall be effective 5 days after the Order is signed by the Regional Administrator or his/her delegatee.

It is so ORDERED and Agreed this _____ day of _____, 2005.

Cecilia Tapia
Director, Superfund Division
U.S. Environmental Protection Agency
Region 7

(Date)

EFFECTIVE DATE: _____

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MAY 19, 2005

In the Matter of Beatrice Former Manufactured Gas Plant Site, Beatrice, Gage County, Nebraska,
Proceedings Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental
Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9604, 9606(a), 9607 and
9622, CERCLA Docket No. 07-2005-0234

The undersigned representative of Respondent City of Beatrice, Nebraska certifies that he/she is
fully authorized to enter into the terms and conditions of this Order and to bind the party he/she
represents to this document.

For Respondent City of Beatrice, Nebraska

(Signature)

(Date)

Name (Print): _____

Title _____

Address: _____

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MAY 19, 2005

In the Matter of Beatrice Former Manufactured Gas Plant Site, Beatrice, Gage County, Nebraska,
Proceedings Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental
Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9604, 9606(a), 9607 and
9622, CERCLA Docket No. 07-2005-0234

The undersigned representative of Respondent Centel Corporation certifies that he/she is fully
authorized to enter into the terms and conditions of this Order and to bind the party he/she
represents to this document.

For Respondent Centel Corporation

(Signature)

(Date)

Name (Print): _____

Title _____

Address: _____
